

LICENSE AGREEMENT FOR USE OF COUNTY COMMUNICATIONS FACILITIES

This Agreement, made and entered into on _____, 2021 (“Effective Date”), is by and between the County of Sonoma, a political subdivision of the State of California (“County” or “Licensor”), and the Marin Emergency Radio Authority, a Joint Exercise of Powers Authority duly organized and operating pursuant to Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code, and pursuant to the Joint Powers Agreement, dated February 28, 1998 (“MERA” or “Licensee”).

RECITALS

WHEREAS, MERA purchased and installed a microwave link (the “MERA Link”) from the Sonoma Mountain communications site pursuant to a License Agreement dated July 22, 2003 between the County and MERA (the “Sonoma Mountain Site”) to the Bayhill Road communications site pursuant to a Sublease agreement with Incline Partners LLC (the “Bayhill Road Site”) , and

WHEREAS, MERA operates and maintains the MERA Link and provides bandwidth for County’s network traffic as part of its emergency radio communications system (the “Current System”), and

WHEREAS, MERA is in the process of replacing the Current System with a new emergency radio communications system (the “Next Gen System”), and

WHEREAS, MERA will not need the MERA Link upon replacement of the Current System, and

WHEREAS, County desires to replace the existing MERA Link, (such replacement being the “County Link”) to increase bandwidth and utilize the current frequencies licensed to the County of Marin by the Federal Communications Commission (“FCC”), and

WHEREAS, County acknowledges MERA’s plans to decommission Bayhill Road Site, which includes the MERA Link, upon the replacement of the Current System; and

WHEREAS, upon decommissioning the MERA Link, MERA will need the use of the County Link until the Next Gen System is operating.

NOW, THEREFORE, the parties hereto agree, in consideration of the mutual covenants and obligations, of the respective parties, to the terms and conditions hereinafter set forth as follows:

AGREEMENT

1. License. The County gives MERA its permission, subject to all the terms and conditions of this Agreement, to use the County Link.

2. MERA’s Sonoma Mountain Site Equipment. All existing microwave equipment supporting the MERA Link at the Sonoma Mountain Site shall remain in sole possession of MERA. MERA shall turn off the MERA Link equipment at such time and in accordance with the Switchover Plan (defined in Section 7 below).

3. MERA's Bayhill Road Site Equipment.

(a) Subject to paragraph (b) below, MERA agrees to transfer to County the MERA Link equipment at the Bayhill Road Site, as described in Exhibit A to this Agreement (the "MERA Equipment"). Upon transfer, MERA shall not bear any costs for the County Link or the related equipment.

(b) MERA agrees to execute a bill of sale to transfer to the County the MERA Equipment, upon both of the following conditions being satisfied: (i) the County has an agreement with Incline Partners to use the Bayhill Road Site for the County Link, and (ii) MERA has approved the Switchover Plan pursuant to Section 7 below.

4. Non-exclusive License. The license herein granted is non-exclusive. County will maintain and control the County Link including, without limitation, granting of additional licenses.
5. Term. The term ("Term") of the license granted herein shall commence on the date that the County starts operations on the County Link (the "Commencement Date") and shall end upon the date that MERA provides written notice to the County that MERA has moved all communications to the Next Gen System.
6. Use. MERA's use of the County Link shall be limited to transmission of MERA radio communications system network traffic. County agrees to carry MERA network traffic on the County Link at a minimum of four (4) T1 capacity at no cost to MERA.
7. Switchover Plan. Prior to undertaking equipment replacement, County shall submit to the MERA Operation Officer a written plan for replacement of the MERA Link and switchover to the County Link (the "Switchover Plan"). The Switchover Plan is subject to the MERA Operation Officer's approval, which approval shall not be unreasonably withheld or delayed. County's work shall not interfere with MERA's existing microwave transmissions or communications.
8. Notice. All notices or demands are deemed to be given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid United States mail, and addressed to the respective parties as follows;

LICENSOR:

County of Sonoma
General Services Department
Real Estate Division
2300 County Center Drive, Suite A200
Santa Rosa, CA 95403
Attention: Manager

LICENSEE:

Marin Emergency Radio Authority
c/o Town of Corte Madera
300 Tamalpais Drive
Corte Madera, CA 94925
Attention: Executive Officer

The address to which any notice or demand may be given to either party may be changed by written notice.

9. Indemnification

(a) MERA. Except for the sole negligence or willful misconduct of the County or its agents, employees or contractors, MERA shall indemnify, hold harmless, and defend the County from any and all claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorneys' fees, which may arise out of MERA's use of the County Link by MERA, or MERA's officers, contractors, licensees, agents, or employees. The indemnity obligations hereunder survive the termination of this Agreement.

(b) County. Except for the sole negligence or willful misconduct of MERA or its agents, employees or contractors, the County shall indemnify, hold harmless, and defend MERA from any and all claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorneys' fees, which may arise out of the County's gross negligence or willful misconduct with respect to the County's obligations under this Agreement. MERA shall not be liable for any loss or damage to persons or property sustained by the County or other persons, which may be caused by theft, or by any act or neglect by any other licensee, tenant or occupant of the Property, or by any Third Parties. The indemnity obligations hereunder survive the termination of this Agreement.

10. MERA's Right to Terminate. MERA shall have the right to terminate this Agreement at any time, upon the occurrence of any of the following events:

- A. Upon providing the County forty-eight (48) hours advance written notice;
- B. Upon revocation, expiration or termination of necessary approvals of any agency, board, court or other governmental authority or third party for the construction and/or operation of the facilities or access thereto or if MERA reasonably determines the cost of obtaining such approval is unfeasible; or
- C. Failure by County to comply with any material term, covenant or condition of this Agreement, if such failure is not cured to the satisfaction of MERA within thirty (30) days after written notice thereof to County.

11. County's Right to Terminate. County shall have the right to terminate this Agreement at any time upon the failure by MERA to comply with any material term, covenant or

condition of this agreement, if such failure is not cured to the satisfaction of County within thirty (30) days after written notice thereof to MERA and if such cure cannot be completed within thirty (30) days, if MERA has not commenced such cure within thirty (30) days.

12. Assignment. MERA shall not voluntarily or by operation of law assign, transfer, license, or otherwise transfer or encumber all or any part of its interest in this Agreement without the County's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, MERA shall have the right to assign this Agreement to any governmental entity that controls, is controlled by, or is under common control with MERA, or to any governmental entity resulting from merger or consolidation with MERA, provided that such assignee assumes in full all of MERA's obligations under the Agreement and County is a full member of such assigned governmental entity.
13. Merger. This Agreement contains all the agreements of the parties hereto and no prior agreements or understandings shall be effective or binding for any purpose.
14. Mediation. Any dispute or claim in law or equity between the County and MERA arising out of this agreement, if not resolved by informal negotiation between the parties, shall be mediated by referring it to the Superior Court of California, County of Marin, for assignment by the Presiding Judge for mediation. Mediation shall consist of an informal, non-binding conference or conferences between the parties and the judge-mediator jointly, then in separate caucuses wherein the judge will seek to guide the parties to a resolution of the case. The mediation process shall continue until the case is resolved or until such time as the mediator makes a finding that there is no possibility of resolution.
15. Applicable Law. This Agreement, which is governed by the laws of the State of California, applies to and binds the successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**LICENSOR:
COUNTY OF SONOMA**

APPROVED AS TO FORM:

County Counsel

Date: _____

ATTEST:

Deputy Clerk

**LICENSEE:
MARIN EMERGENCY RADIO AUTHORITY
FORM:**

APPROVED AS TO

By: _____
Maureen Cassingham

By: Trisha Ortiz

Title: Executive Officer

Title: MERA Counsel

Date: _____

EXHIBIT A
MERA EQUIPMENT

[insert list of equipment to be transferred from MERA to County]